IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

(1) S. B. CIVIL MISCELLANEOUS APPEAL NO.119/93
(Miss Purviksha v. Ratan Lal & Others.)

(2) S. B. CIVIL MISCELLANEOUS APPEAL NO.120/93
(Kanti Bhai v. Ratan Lal & Others.)

(3) S. B. CIVIL MISCELLANEOUS APPEAL NO.121/93
(Smt. Indra Ben v. Ratan Lal & Others.)

(4) S. B. CIVIL MISCELLANEOUS APPEAL NO.128/93
(Smt. Gopi v. Ratan Lal & Others.)

All the aforesaid appeals have been filed, against the Judgment dated 26-12-1992 passed by Shri O. P. Gupta, RHJS, Judge, Motor Accidents Claims Tribunal, Udaipur in Claim Case Nos.4/89, 2/89,5/89 & 6/89.

DATE OF JUDGMENT :::: NOVEMBER 01, 2007

P R E S E N T

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr.A.K.Rajvanshi,)for Appellant (s).
Mr. Deelip Kawadia)
Mr.V.K.Vyas, for Respondent (s).

BY THE COURT:-

Appellants have preferred appeals against the common judgment passed in their claim petitions. Since the judgment dated 26.12.1992 was passed by the Judge, Motor Accidents Claims Tribunal, Udaipur, deciding all the claim petitions arising out of one accident, therefore, all these appeals are decided by this Judgment.

Claimants appellants preferred claim petitions, stating that while they were returning to Kaparbanj from Nathdwara in Car No. GBQ 966, then near village Tidi, a truck bearing No. RJY 7435 dashed with their car. The truck was driven by Ratan Lal who came on the wrong side due to rash and negligent driving and due to this accident, the car driver Kalu Miya died, whereas others sustained serious injuries. The claimants submitted their different claims by maintaining separate claim petitions.

Reply to claim petition was submitted by the respondents, stating that accident had not taken place due to rash and negligent driving of the truck driver, rather accident took place due to rash and negligent driving of the car driver, who had tried to over-take the truck and, during that process, while the car was on the wrong side, it met with an accident. Insurance

Company submitted separate reply, contending that the insurer of the vehicle and the driver breached the conditions of policy. Thus, insurance company is not liable to bear any liability of compensation, arising out of the accident.

The learned Judge, Motor Accidents Claims Tribunal, Udaipur, decided all the claim petitions by common judgment. The Tribunal awarded compensation to the claimants, but claimants-appellants are dissatisfied with the amount so awarded by the Tribunal, thus they have preferred these appeals. Since claim of each appeal is to be decided on its facts, thus each case is separately dealt with.

CIVIL MISC. APPEAL NO.120/93

Appellant Kanti Bhai filed two claim petitions which were bearing Nos. 1/89 and 2/89. The first claim petition was for claiming compensation due to the injuries sustained by the claimants, whereas Claim Petition No.2/89 was to claim compensation arising out of damage to the car. The claimants preferred one appeal and as per the title of the appeal, same is in claim petition No.2/89. Before hearing of the case, appellant moved an application for seeking amendment in the appeal to the effect that due to the typographical error, the appeal was

shown against the judgment in claim petition No.2/89, whereas appellant had preferred appeal against the judgment in claim petition No.1/89. The said application is allowed, looking to the fact that the grounds raised in the appeal as well as the valuation, shows that the appeal was intent to prefer against the judgment in claim petition No.1/89.

The contention of the learned counsel for the appellant is that the claimant was entitled for compensation of Rs.4,14,000/-, whereas Tribunal awarded only Rs.10,000/-. It was submitted that the claimant sustained fracture and due to which, not only his business suffered, resulting in loss of Rs.40,000/-, but he was deprived of a sum of Rs.10,000/- each month for a period of three months. The claimant further sustained 30% deficiency. Thus, a claim of Rs.3,60,000/- was made in that regard. A sum of Rs.10,000/- was claimed due to mental agony. However, Tribunal allowed a lump sum amount of Rs.10,000/- only. According to the learned counsel for the appellant, Tribunal erred in disallowing the claim of the appellant to the extent it was made in the claim petition, more so, when the documents were produced to substantiate that claim. Hence, it was prayed that the judgment of the Tribunal should be modified by awarding compensation to the extent it was claimed in the claim petition.

Learned counsel appearing for the respondents urged that though the claimant claimed a sum of Rs.4,14,000/-, but he had failed to prove and substantiate his claim by producing relevant documents. It was contended that if the claimant was earning a sum of Rs.10,000/- per month, then being an income-tax payee, he should have produced his income-tax return as well as accounts of his business to substantiate his claim pertaining to the loss of Rs.40,000/-. It was further urged that deficiency to the extent of 30% is claimed, but the same has not been substantiated, rather, contrary to the injury report and X-ray report issued by the Hospital at Udaipur, certain documents were got created at Ahmedabad to enlarge the claim. The claimant had not sustained any fracture as is clear from the X-ray report of Udaipur Hospital, rather injury report shows that the claimant had sustained simple injuries. Thus, according to the learned counsel for the respondents, the learned Tribunal has rightly awarded lump sum amount of Rs.10,000/-.

I have considered the rival submissions of the learned counsel for the parties and find that though the claimant claimed a sum of Rs.4,14,000/-, but documents pertaining to the loss of business, as well as monthly income of the claimant were

not produced to substantiate the claim and the same is position regarding deficiency of working. In absence of any proof, more specifically when the burden to prove these facts were on the claimants, I cannot accept the claim of the claimants in regard to the business loss, as well as loss of income, apart from the deficiency in working to the extent of 30 %. The perusal of documents further shows that Exhibits 4 and 5 were issued by Hospital at Udaipur and perusal of those documents does not show that the claimants had sustained fracture, but contrary to the X-ray report given by the hospital at Udaipur, a further X-ray report was produced as Ex.19, showing fracture. The claimant had also produced medical bills as Exs. 7 to 18. Careful perusal of medical bills does not show that the claimant was given treatment of fracture and in view of these facts, I cannot accept even the plea that X-ray report Ex.19 should be given weightage, contrary to Exs. 4 and 5 issued by the Government hospital, Udaipur. The claimant had sustained six injuries, but all were found to be simple, in view of the injury report Ex.4 and the injury report does not show that the petitioner was given stitches, on account of injuries. Thus, for simple injury, the claimant cannot claim a huge amount of Rs.4,14,000/-, more so when claimant has failed to produce relevant documents which were otherwise in his possession only. The documents however show that the claimant lost his three

teeth, apart from simple injuries and he further produced medical bills for a sum of Rs.1845/-. However, the learned Tribunal awarded a lump sum amount of Rs.10,000/- towards compensation as well as medical bills, apart from the pain and sufferance of the claimant. I feel that a lump sum amount awarded by the Tribunal is not reasonable, because apart from the medical bills, compensation was required to be given for permanent deformity sustained by the claimant on account of loss of his three teeth, apart from pain and sufferance, causing mental agony. In my opinion, claimant is entitled for a claim of Rs.25,000/-. I, accordingly, enhance the amount of Rs.10,000/- to that of Rs.25,000/-. If the claimant has already received the amount of Rs.10,000/- then the said amount would be deducted from Rs.25,000/-. The sum of Rs.15,000/- enhanced in this appeal, will carry interest at the rate of 9% from the date of judgment of the trial Court.

CIVIL MISC. APPEAL NO.119/93.

In this appeal, the contentions of the learned counsel for the appellants is that the claimant had only claimed Rs.3,15,000/- due to dislocation of her jaw, apart from the injuries sustained by her. The claimant had incurred a sum of

Rs.14,000/- towards her treatment at Ahmedabad, apart from other expenses towards operation of jaw. The appellant had sustained deficiency to the extent of 30% arising out of injuries. Thus, according to the learned counsel for the appellant, a just claim was made by the appellant, but the Tribunal allowed only a sum of Rs.5,000/-, ignoring all the claims, including medical bills submitted by the claimants and the mental agony sustained by her, due to injuries.

Learned counsel appearing for the non-appellants submitted that though the claimant had claimed a sum of Rs.3,15,000/-, but the said claim has not been substantiated by producing documents to show that there was deficiency in working to the extent of 30% and dislocation of jaw which required appellant to undergo an operation. Learned counsel for the non-appellant urged that if the documents produced by the appellant are looked into, then it shows that she had not sustained any serious injuries, because as per Ex.21 and Ex.22, the appellant had sustained only a cut on the left lip and Ex.22 does not show fracture, but, contrary to these documents, claimant further produced Exs. 45 and 46 to show that she has sustained a fracture, but those documents were created only with a view to enlarge the claim.

I have considered the rival submissions of the learned counsel for the parties and gone through the facts of the case. The learned Tribunal awarded a sum of Rs.5,000/- to the claimant, after taking note of all the facts available on record. The perusal of the documents shows that the appellant was given treatment at Medical College, Udaipur and in X-ray report, no fracture was shown. Ex.21 shows a simple injury to the appellant. The claimant, however, further took treatment at Ahemedabad and produced medical bills. However, apart from the medical bills, other documents do not show that what type of treatment was administered to the claimant. Looking to the contradictions in the medical reports of Udaipur and Ahmedabad, I have to give more weightage to the documents issued by the Medical College, Udaipur, because, in first X-ray report, as well as injury report, the claimant has not been shown to have sustained either fracture or serious injuries. However, in a surprising manner, when after many days, X-ray was taken at Ahmedabad, a fracture was shown. But, this being a document issued by the Private Clinic, the weightage cannot be given contrary to the medical report issued by the Government Medical College Udaipur, when the claimant has failed to explain as to how a contradiction arose in the medical report, more so, when the subsequent medical report was obtained from a Private Clinic. In absence of an explanation, I cannot accept the

argument of the learned counsel for the appellant that the claimant had sustained dislocation on her jaw, apart from other injuries. Even the report submitted by the Neurologist does not show that the claimant had sustained deficiency in working. In view of the above facts, it becomes clear that the claimants have made excess claim of Rs.3,15,000/-, without any basis. However, perusal of the medical bills shows that the claimant had purchased medicines and must have been given treatment for few days and have sustained pain and sufferance, causing mental agony.

In view of the above facts, award of lump sum amount of Rs.5,000/- seems to be in lower side. Considering the medical bills, regarding purchase of medicines, as well as mental agony sustained by the claimants, I feel that the claimant should have been awarded at least Rs.15,000/- which amount is sufficient to meet medical bills, as well as the mental agony and the compensation due to the injuries.

I, accordingly, modify the award of the learned trial Judge, by enhancing the sum of Rs.5,000/- to Rs.15,000/-. The claimant would be entitled for a sum of Rs.15,000/- with interest at the rate of 9% from the date of the award. If the claimant has already been paid a sum of Rs.5,000/- and interest,

then the said amount would be deducted. However, it is clarified that interest would be admissible to the claimant on the sum of Rs.5,000/- from the date it was allowed by the Tribunal.

CIVIL MISC. APPEAL NO.121/93.

Claimant Indra Ben claimed a sum of Rs.2,85,000/-, showing that due to the injuries sustained by her, she lost her working efficiency to the extent of 80% and thereby sustained total loss of Rs.2,85,000/-, which includes a sum of Rs.12,000/- towards medical expenses, Rs.10,000/- towards servant and Rs.5,000/- towards nutrition diet. The learned Tribunal awarded a sum of Rs.8,000/- to the claimant which, according to the learned counsel for the appellant, is not reasonable. It has been contended by the learned counsel that the due to the accident, appellant sustained injuries on her face, resulting in fracture of her jaw, apart from the fact that teeths were broken. It was submitted that due to these injuries, the claim of a sum of Rs.2,85,000/- was quite reasonable, but ignoring the claim of the claimant which includes even the payment of medical bills, expenses towards servant and expenses towards nutrition diet, the Tribunal awarded only a sum of Rs.8,000/-. The appellant thus, prayed for grant of compensation of Rs.2,85,000/-.

Learned counsel appearing for the non-appellant urged that the claimant had sustained simple injuries as is clear from the medical report Exhibit 58 which was prepared at the Government Medical Hospital, Udaipur, wherein injuries No. 3 to 5 were reported to be simple and for injuries No. 1 and 2, X-ray report was advised. Exhibit 59 does not show any fracture, but surprisingly that after lapse of a period of two months, certain reports were taken from Private hospital at Ahmedabad, showing a fracture, apart from other injuries to the claimants. According to the learned counsel for the non-appellants, those documents are nothing but a creation to enlarge the claim, otherwise there should not be any question of contradiction in the medical report. In view of these facts, it was prayed that the award passed by the Tribunal should be maintained.

I have considered the rival submissions pertaining to the claim of the appellant and find that as per injury report Exhibit 58, the claimant sustained five injuries, out of which opinion regarding injuries No. 1 and 2 was kept reserve, for want of X-ray report. In X-ray report, no fracture was found thus contrary to the said medical report given by the Government hospital, Udaipur. I cannot accept other documents produced by the claimant which were prepared after lapse of some time, showing

fracture and other injuries to the claimant. It seems that in all the claim petitions, claimants have obtained documents from Private institution at Ahmedabad just to enlarge the claim, otherwise, after immediate medical examination, claimant having not shown to have sustained any fracture or serious injuries, then after lapse of many days, a fracture cannot be detected in the manner it happened in this case, because in case of fracture, if immediate plastering is not applied, the injured cannot even move. However, in the present case, there is no evidence to show that claimant had in fact sustained a fracture and for that reason, he was immediately given required treatment, rather other documents submitted by the claimant does not support Exhibits 60 to 62, except that some how X-ray report was obtained from Ahmedabad, but the same is contrary to the X-ray report from the Medical College, Udaipur. Thus, in my opinion, the claimant has sustained only simple injuries, but due to those simple injuries, there was a sufferance, resulting in mental agony, apart from expenses towards treatment. Taking note of the medical bills, produced by the claimants, I feel it appropriate to grant total compensation of Rs.15,000/- in place of Rs.8,000/- as was awarded by the Tribunal. The award of the Tribunal is modified accordingly. The claimant would be entitled for interest on the enhanced amount at the rate of 9% from the date of the award of the Tribunal.

CIVIL MISC. APPEAL NO.128/93.

Appellant – Smt.Gopi w/o. Hemex Patel, claimed a sum of Rs.1,13,500/- towards injuries showing that she was given twenty-five stitches, apart from fracture on shoulder. Initially, the claimant was admitted in Udaipur hospital, but, thereafter, shifted to Ahmedabad, where she remained bedridden for a period of four months. The claimant has claimed Rs.1500/- due to injuries sustained by her. Rs.20,000/- were claimed due to the fracture of shoulder and Rs.300/- per month claimed due to the deficiency in working, totaling amount of Rs.90,000/-. Learned counsel for the appellant submitted that as against this claim, the Tribunal awarded only a sum of Rs.5,000/-, ignoring not only the medical bills, but also the fact of sufferance of the appellant due to the injuries sustained by her.

I have considered submissions of the learned counsel for the parties and find that as per Ex.1, claimant sustained three injuries and there exists no report by the Medical College, Udaipur to the effect that the claimant had sustained any fracture. In this case also, X-ray report was obtained from Private hospital at Ahmedabad, showing fracture and certain injuries to the claimant. In view of the discussion made earlier, as well as the fact that the document issued by the Medical

College, Udaipur cannot be ignored, more so, when contradictory document has been issued by the Private institution, without clarifying and supporting the fact that how a fracture can be detected after lapse of many days. Looking to the fact that the claimant had sustained hardly any injuries, thus, I feel that the claimant has been given a just amount of Rs.5,000/- thus, I am not inclined to enhance the amount awarded to the claimant by the Tribunal.

Consequently, in view of discussions made above, the Appeals No.120/93 preferred by Kanti Bhai, No.119/93 preferred by Miss Purviksha and No. 121/93 preferred by Smt.Indra Ben are partly allowed, while Appeal No.128/93 preferred by Smt. Gopi is dismissed. In view of the discussions made in each case, appellants Kanti Bhai, Miss Purviksha and Smt. Indra Ben shall be entitled to receive enhanced amount along with interest as discussed separately in each case. The appeal of Smt.Gopi is dismissed. The respondents are directed to make the payment of the enhanced amount along with interest within a period of three months, otherwise after expiry of period of three months, the amount will carry interest at the rate of 12%. All the appeals are decided accordingly.

(MUNISHWAR NATH BHANDARI), J.

scd.